

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-8 are presently pending in this case. Claim 4 is amended by the present amendment. As amended Claim 4 is supported by the original claims, no new matter is added.

In the outstanding Official Action, Claims 1-8 were rejected under 35 U.S.C. §102(b) as anticipated by Ue et al. (U.S. Patent No. 6,973,289, hereinafter "Ue").

Initially, it is respectfully noted that reference AW listed on the information disclosure statement filed June 2, 2004 was not initialed as considered. Accordingly, a form 1449 with reference AW initialed as considered is respectfully requested to be included with the next office communication.

Claim 4 is amended to correct an informality.

With regard to the rejection of Claim 1 as anticipated by Ue, that rejection is respectfully traversed.

Claim 1 recites in part:

a communications-terminal selecting unit configured to select out of said communications terminals one or more which cause to change corresponding one or more of the downlink transmission rates in accordance with said downlink transmission qualities obtained at said transmission-quality obtaining unit.

Ue describes a method of controlling the transmission rate between a base station and a communication terminal.¹ The outstanding Office Action cited transmission frame generator 107 described at column 3, line 41-63 of Ue as "a communications-terminal selecting unit." However, the cited portion of Ue only describes that transmission rate switching controller 106 sends a transmission rate switching signal to transmission frame

¹See Ue, abstract.

generator 107. Thus, the base station apparatus of Ue including transmission frame generator 107 does **not** constitute a communications-terminal selecting unit configured to select out of communications terminals one or more which cause to change corresponding one or more of downlink transmission rates in accordance with downlink transmission qualities obtained at a transmission-quality obtaining unit as is recited in independent Claim 1. Thus, it is respectfully submitted that Ue does not teach “a communications-terminal selecting unit” as defined in Claim 1. Consequently, Claim 1 (and Claims 2-6 dependent therefrom) is not anticipated by Ue and is patentable thereover.

Claim 7 recites in part:

a mobile-station selecting unit configured to select out of said mobile stations one or more which cause to change corresponding one or more of the downlink transmission rates in accordance with said downlink transmission qualities obtained at said transmission-quality obtaining unit.

As noted above, column 3, line 41-63 of Ue does not describe a unit configured to select out of said mobile stations one or more which cause to change corresponding one or more of the downlink transmission rates in accordance with said downlink transmission qualities obtained at said transmission-quality obtaining unit. Thus, it is respectfully submitted that Ue does not teach “a mobile-station selecting unit” as defined in Claim 7. Consequently, Claim 7 is not anticipated by Ue and is patentable thereover.

Claim 8 recites in part:

selecting, when at least one of said downlink transmission qualities is determined to fall below a predetermined quality, as one or more of the communications terminals which cause to change corresponding one or more of the downlink transmission rates, at least one communications terminal out of said communications terminals with corresponding downlink transmission quality falling below said predetermined quality.

As noted above, column 3, line 41-63 of Ue does not describe selecting one or more of the communications terminals which cause to change corresponding one or more of the

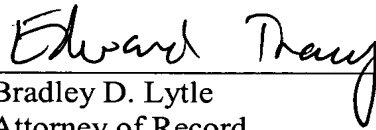
Application No. 10/821,918
Reply to Office Action of June 13, 2007

downlink transmission rates. Thus, it is respectfully submitted that Ue does not teach "selecting" as defined in Claim 8. Consequently, Claim 8 is not anticipated by Ue and is patentable thereover.

Accordingly, the pending claims are believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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